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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/517,523	12/13/2004	Simon Knowles	3011-1024	1245

466 7590 06/06/2008
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ART UNIT	PAPER NUMBER
3637	

MAIL DATE	DELIVERY MODE
06/06/2008	PAPER

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BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

Application Number: 10/517,523
Filing Date: December 13, 2004
Appellant(s): KNOWLES, SIMON

Robert J. Patch
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed 19 May 2008 appealing from the Office action mailed 21 May 2007.

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

(4) Status of Amendments After Final

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

6,684,576	Grandin	2-2004
3,532,403	Koski	10-1970
1,411,260	Baker et al.	4-1922
3,498,239	Bartlett et al.	3-1970
4,699,067	Okopny	10-1987
1,093,119	Donavan	4-1914

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claims 28, 33 and 35 are rejected under 35 U.S.C. 103(a) as being unpatentable over Grandin, US patent 6,684,576, in view of Koski, US patent 3,532,403.

Grandin teaches a collapsible bar (80) having a variable number of support members (12) and means (26, 27) for releasably latching a plurality of selectable and interchangeable work surface elements (52, 74) having different functions (e.g., surface element 74 enables bartenders to freely enter and exit the collapsible bar), each selected surface element being removably engagable with the support members via the releasable latching means; the work surface elements interconnecting the support members when assembled (see Figs. 1, 2). Grandin, though teaching interchangeable work surface elements with different functions, does not teach a work surface element having a recess therein or an aperture therethrough. Koski teaches a modular bar (10) with support members (20) supporting a plurality of work surface elements (43) with different functions, one of the work surface elements having a recess (45)

therein, suitable for use as a bottle holder or ice-chest, and having an aperture therethrough leading to a waste container (46). It would have been obvious, to one of ordinary skill in the art at the time the invention was made, to modify the collapsible bar of Grandin by including a recess or aperture in a surface element, as taught by Koski, for the purpose of providing a sink or waste receptacle for use by bartenders.

Regarding claims 33 and 35, each surface element of Grandin is removably positionable in a plurality of positions on the support members and is interchangeable with another surface element; and Grandin further teaches a screen wall (42) around the front and sides of the bar.

Claims 29 and 32 are rejected under 35 U.S.C. 103(a) as being unpatentable over Grandin and Koski as applied to claim 28 above, and further in view of Baker et al., US patent 1,411,260.

Grandin and Koski do not teach latching means including an elongate channel on each support and skirt portions on the surface elements. Baker et al. teach a collapsible structure having support members (1, 3) supporting surface elements (4) via releasable latching means, the releasable latching means including skirt portions (17) on the surface elements received as a close fit in elongate channels (16) on the support members. It would have been obvious, to one of ordinary skill in the art at the time the invention was made, to modify the collapsible bar of Grandin, already modified by Koski, by including elongate channels on the support members and skirt portions on the surface elements, as taught by Baker et al., for the purpose of allowing the structure to be securely assembled without requiring the use of bolts.

Regarding claim 32, Grandin teaches support members having an upright (22) and a plurality of horizontal cross-members (20, 24), but not front and back uprights. Baker et al. teach support members having front and back uprights (1) and a plurality of horizontal cross-

members (3) therebetween. It would have been obvious, to one of ordinary skill in the art at the time the invention was made, to modify the collapsible bar of Grandin, already modified as above, by including front and back uprights in the support members, as taught by Baker et al., for the purpose of strengthening the assembly and providing additional support for the surface elements.

Claims 30 and 31 are rejected under 35 U.S.C. 103(a) as being unpatentable over Grandin, Koski, and Baker et al. as applied to claim 29 above, and further in view of Bartlett et al., US patent 3,498,239.

Grandin and Koski, modified as above by Baker et al., teach a collapsible structure with latching means having open-ended channels, but not a latch element which slidably receives the edge of the open end of the channel. Bartlett et al. teach a shelving system having a surface element (8) supported by support members (6), the support members having an elongate channel (26) which receives skirt portions (28) of the surface element, and wherein there is also included on an edge of the skirt portion a latch element (36, 40) which can slidably receive the edge of the channel. It would have been obvious, to one of ordinary skill in the art at the time the invention was made, to modify the collapsible bar of Grandin, already modified as above, by including on an edge of the skirt portion of the surface element a latch element which slidably receives the edge of the open end of the channel, as taught by Bartlett et al., for the purpose of further securing the surface element to the support member.

Claim 34 is rejected under 35 U.S.C. 103(a) as being unpatentable over Grandin and Koski as applied to claim 28 above, and further in view of Okopny, US patent 4,699,067.

Grandin does not teach a bar-top element; Koski teaches a bar-top element (21) supportable by the support members, but does not teach means for releasably retaining the bar-top on the support members. Okopny teaches a collapsible table having a work surface element (1) supported by support members (3); a secondary surface element (10) usable as a bar top, supported by the support members; and means (5, 9) for releasably retaining the bar-top element on the support members, including support extensions (5) and support brackets (9). It would have been obvious, to one of ordinary skill in the art at the time the invention was made, to modify the collapsible bar of Grandin, already modified by Koski, by including a bar-top element, as taught by Koski, for the purpose of providing a surface on which to pass drinks to customers, and by including means for releasably retaining the bar-top element on the support members, as taught by Okopny, for the purpose of allowing the bar-top element to be selectively and securely installed.

Claims 36 and 37 are rejected under 35 U.S.C. 103(a) as being unpatentable over Grandin and Koski as applied to claim 35 above, and further in view of Donavan, US patent 1,093,119.

Grandin and Koski teach screen walls around the front and sides of the bar, but not hingedly jointed or freestanding screen walls. Donavan teaches a screen wall (Fig. 1) which is freestanding and hingedely jointed. It would have been obvious, to one of ordinary skill in the art at the time the invention was made, to modify the collapsible bar of Grandin, already modified by Koski, by including a hingedly jointed screen wall, as taught by Donavan, for the purpose of enabling the screen wall to be conveniently collapsed for storage, and by including a freestanding screen wall, as taught by Donavan, for the purpose of allowing the entire screen wall to be removed and repositioned as a unit without interfering with the support structure.

(10) Response to Argument

Claims 28 and 32–37 — Rejection 1

Grandin discloses a modular, sectional, collapsible bar with support members and interchangeable work surface elements, but does not disclose work surface elements with recesses or apertures. Koski, in contrast, teaches a sectional bar with a variety of work surface elements, including surface elements with recesses (45) and apertures leading to waste containers (46). Koski points out that providing a sectional bar with such work surfaces "necessarily broadens the use of the bar module during the preparation, use and cleaning up operations accompanying the serving of refreshments." (col. 2, lines 11–17) In light of this teaching, it would have been obvious to modify Grandin to include work surfaces with recesses and apertures.

Appellant does not contest the combination of the different work surfaces of Koski with the sectional bar structure of Grandin (Appeal Brief at page 5), arguing instead against the use of Grandin as a base reference. Accordingly, the combination will not be further addressed herein.

Appellant appears to argue (Brief at page 6) that Grandin's apparent omission of "bolt 53" from the drawings makes it impossible to determine how the bar of Grandin is assembled, thereby preventing the assembly from being considered to have a releasable latching means. Grandin's disclosure states that to attach work surface elements 52 to support members 12, "a plurality of apertures appropriately are bored into the support members 12 and a plurality of bolts fastened by nuts are used to readily connect the components, as well known in the art" (col. 4, lines 15–21); and that "spaced apertures 27 are bored and threaded into the pair of knobs 26 [on support members 12] to be used to secure the top plate 52 on and to the pair of

knobs 26." (col. 4, lines 28–30) It is submitted that the connection is straightforward, and one need not "speculate as to what Grandin had in mind." (Brief at page 6)

It is further submitted that the bolt assembly disclosed by Grandin is a "means for releasably latching", as claimed. Grandin's assembly latches (*i.e.*, fastens) the work surface elements to the support members, and is eminently releasable. Appellant appears to argue, though not explicitly, that the "means for releasably latching" in claim 28 should be considered as a means-plus-function limitation under 35 U.S.C. 112, paragraph 6: "[W]e cannot find anything corresponding to the releasable latching means of the present invention" (Brief at page 6). However, the claim limitation is not considered to invoke 35 U.S.C. 112, sixth paragraph, as the phrase is modified by additional acts and structure (see claim 28, lines 8–10; and claims 29–31 in their entirety) for achieving the specified function. Accordingly, the broadest reasonable interpretation of the limitation is considered to include the bolted latching means of Grandin.

Appellant further argues that the bar of Grandin "is obviously permanently assembled", is not collapsible, and would not have been used as a temporary bar at a social function (Brief at pages 6–7). It is respectfully noted that Grandin discloses that the bar "enabl[es] service of a large number of people during social or corporate-events" (col. 3, lines 16–18) and "can be readily assembled or disassembled repeatedly to reduce storage space." (col. 3, lines 30–33) It is submitted that the structure of Grandin qualifies as a "collapsible bar" as claimed.

Appellant's arguments regarding shelving units (Brief at pages 6–8) are not germane to the rejection over Grandin in view of Koski, both of which Appellant concedes are "in the field of sectional bars" (Brief at page 5).

Claim 29 — Rejection 2

Grandin, modified as above by Koski, discloses a modular collapsible bar with interchangeable work surface elements releasably latched to support members, but the releasable latching means of Grandin (indeed, every modular connection) includes threaded apertures for receiving bolts, rather than the claimed channel receiving skirt portions as a close fit. Baker et al. teach a modular collapsible structure, with interchangeable surface elements releasably latched to support members; further teaching the use of a latching means comprising skirts (17) received in "narrow channels 16" (page 1, line 91), and pointing out that this latching arrangement allows the assembly and disassembly of the structure "without the use of bolts or special fastening means" (page 1, lines 13–14). Accordingly, Baker et al. articulate a motivation for replacing the latching means of Grandin with skirts and channels (*i.e.*, obviating the use of bolts in the bar). Alternatively, the claimed channel and skirt can be seen as an improvement on the modular bar of Grandin and Koski; the prior art in Baker et al. contains a comparable modular structure improved in the same way as the claimed invention, and one of ordinary skill in the art could have applied the known latching means of Baker et al. in the same way to the bar of Grandin and Koski with predictable results.

Appellant argues (Brief at pages 8–9) that Baker et al. do not teach a skirt received in a channel in "a close fit" as recited in claim 29. It is noted that the term "close fit" is nowhere defined in Appellant's specification, though it is mentioned in regard to channels 36 and skirt portions 38 (spec. at page 5, lines 22–24) and is illustrated in Fig. 4, where it appears that the width of channel 36 is approximately equal to the thickness of skirt portion 38 of surface element 14. It is further noted that Baker et al. invariably refer to "*narrow* channels 16" (page 1, line 91; page 2, line 23; emphasis added), which would suggest a close fit; and that Fig. 6 of Baker et al.

shows that the width of narrow channel 16 is approximately equal to the thickness of the skirt of surface element 4. Accordingly, it is submitted that Baker et al. teach a close fit as claimed.

In response to Appellant's argument that Baker et al. is nonanalogous art, it has been held that a prior art reference must either be in the field of Appellant's endeavor or, if not, then be reasonably pertinent to the particular problem with which the Appellant was concerned, in order to be relied upon as a basis for rejection of the claimed invention. See *In re Oetiker*, 977 F.2d 1443, 24 USPQ2d 1443 (Fed. Cir. 1992). In this case, Appellant's stated problem is to provide a collapsible structure "which can be temporarily erected in almost any location and sized to accommodate any requirement", and "having selectively positionable, repositionable and interchangeable work surface elements and shelf surface elements." (Brief at page 7; spec. at page 9, lines 19–25) It is submitted that the modular collapsible structure of Baker et al. (which Appellant notes "can be quickly and easily assembled and disassembled", Brief at page 9) is capable of temporary erection and can be resized as desired, and has repositionable and interchangeable surface elements, and thus is directly pertinent to the problem with which Appellant was concerned.

Further, it is submitted that Appellant's invention is merely a specialized case of a modular shelving unit, which happens to have a particular intended use and shelves having additional structure promoting that intended use. However, a shelf by any other name still needs support, and one of ordinary skill in collapsible bars—or tables, etc.—would certainly look to the teachings of other collapsible structures for guidance.

Claims 30 and 31 — Rejection 3

Grandin, Koski, and Baker et al. teach a collapsible bar substantially as claimed, including a releasable latching means comprising a skirt received as a close fit in an open-ended elongate channel, but not a latch element which can slidably receive the open-end edge of the channel. Bartlett et al. teach a modular collapsible structure with surface elements releasably latched to support members; further teaching the use of a releasable latching means comprising an elongate channel (26) which receives skirt portions (28) of the surface element, and wherein there is also included on an edge of the skirt portion a latch element (36, 40) which can slidably receive the edge of the channel. Accordingly, the claimed latch element can be seen as an improvement on the collapsible bar of Grandin, as modified by Koski and Baker et al.; and the prior art in Bartlett et al. contains a comparable collapsible structure improved in the same way as claimed. One of ordinary skill in the art could have applied the known latch element taught by Bartlett et al. in the same way to the surface elements of Grandin, already modified by Koski and Baker et al., with predictable results.

It is acknowledged that the skirts 28 of Bartlett et al. are not received in the channels 26 as a close fit, but the usefulness of latch element 36,40 does not depend on the width of the channel and would be applicable to a variety of different constructions.

Rejection 4

As noted by Appellant, claim 34 stands or falls with independent claim 28.

Rejection 5

As noted by Appellant, claims 36 and 37 stand or fall with independent claim 28.

(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

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